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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,834	02/25/2002	Timothy W. Exler	01-393	4641

7590 05/11/2004

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PITTSBURGH, PA 15222

EXAMINER

RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/082,834

**Applicant(s)**

EXLER, TIMOTHY W.

**Examiner**

RAMON O. RAMIREZ

**Art Unit**

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,11 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 4,10 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/12/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

***Detailed Action***

This is the third Office Action corresponding to amendment filed Feb 26, 2004. Due to the discovery of a new patent, the Final Rejection has been withdrawn and a new action is provided. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Information Disclosure Statement***

The information disclosure statement (IDS) filed Jan 12, 2004, which is after the mailing of a Final Rejection but before payment of the issue fee cannot be considered because it was not accompanied by a petition requesting consideration of the IDS, and the petition fee as set forth in 37CFR 1.17(i). It has been placed in the application file but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 102***

Claims 1, 5-8, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakayama (Pat No 3,921,620).

The patent to Nakayama shows a band, having fastening means, magnet (6) secured to one side of the band in a crevice and being covered by cloth means (7). As to claims 16 and 17, the container is not a positive element of the combination, and consequently it has no patentable weight.

*Claim Rejections - 35 USC § 103*

Claims 2, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama.

The type of magnet used, dimension and used of indicia are all considered to be obvious matters of engineering choice with no patentable significance.

*Allowable Subject Matter*

Claims 4, 10 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1 considered to be allowable over the art of record if amendment as follows:  
in line 1, "for a" should be changed to - - mounted on - -; and  
in the last line, "adapted to accommodate" should be changed to - - accommodating - -.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Russell (5,782,743) shows a device having a band with attachment means and magnet means secured within a crevice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner **Ramírez** at telephone number (703) 308-0748. The examiner can be normally reached on Monday-Thursday and alternate Fridays.

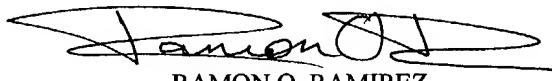
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The fax numbers for this Group are (703) 872-9306 (official papers), and (703) 308-3519 (unofficial papers).

Any inquiry of general nature relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

A shortened period for response to this Office Action expires THREE MONTHS from the mailing date of this action.

R.O. RAMIREZ  
May 3, 2004



RAMON O. RAMIREZ  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600  
ART UNIT 3632